

Current Developments

THE IMPLICATIONS OF TRIPS TO THE PHARMACEUTICAL SECTOR AND ACCESS TO MEDICINE: MALAYSIAN EXPERIENCE

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ABSTRACT

IPRs have never been economically and politically more important or controversial than they are today. There are continuing debates over the pricing of essential drugs for ill and afflicted and their availability. In these debates the pharmaceutical sector has assumed unusual prominence particularly in regard to its relationship to IPRs, R&D incentives, pricing and access to medicines. Patents are particularly considered the most controversial and problematic area under TRIPS. Malaysia presents an interesting case because patents have been granted to pharmaceutical products and processes since the introduction of the law in the 19th century. For many developing countries, patents were not granted for pharmaceutical products mainly to ensure the accessibility of essential drugs to the large majority of the population. This was because product patents have a direct impact on prices of drugs. The introduction of product patents in the TRIPS Agreement therefore became one of the most controversial issues in the WTO. As a result of these debates, the Doha Declaration on the

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TRIPS Agreement on Public Health was announced in 2001. The Doha Declaration stated explicitly that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. In particular, paragraph five of the declaration is more explicit and states that the member countries shall have the freedom with respect to compulsory licensing and to determine what constitute national emergency and other circumstances of extreme urgency. However, many developing countries have expressed their apprehension in using these flexibilities effectively in addressing their internal public health concerns. There is lack of clarity in the application of these flexibilities and this can be provided if some principles and guidelines which are pro-public health and pro-access are formulated.

KEYWORDS: *TRIPS Agreement, Malaysia, Pharmaceutical sector, Access to Medicine, TRIPS Flexibilities*